

Assembly Bill No. 229

Passed the Assembly January 19, 2010

Chief Clerk of the Assembly

Passed the Senate June 28, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 16361 of the Probate Code, relating to the Uniform Principal and Income Act.

LEGISLATIVE COUNSEL'S DIGEST

AB 229, Charles Calderon. Uniform Principal and Income Act: trust administration: income and payments.

Existing law, the Uniform Principal and Income Act, requires a trust to be administered with due regard to the respective interests of defined income beneficiaries and remainder beneficiaries. The act requires that a tax required to be paid by a trustee based on receipts allocated to income be paid from income. The act requires the trustee, in order to obtain an estate tax marital deduction for a trust, to allocate a prescribed amount of a payment to income, in accordance with certain requirements. The act further requires the trustee of a trust that qualifies for, or has elected to qualify for, the marital tax deduction, where the separate fund payer provides documentation reflecting the internal income of the separate fund to the trustee, to allocate the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to the act, as provided, and to allocate the balance to the principal.

The act provides that, if the separate fund payer does not provide documentation reflecting the internal income of the separate fund to the trustee, but the trustee can determine the value of the separate fund, the internal income of the separate fund is deemed to equal 4% of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. The act further provides that, in other instances where the separate fund payer does not provide documentation reflecting the internal income of the separate fund to the trustee, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under a specified federal tax law.

This bill would clarify that this latter provision applies where the separate fund payer does not provide documentation reflecting the internal income of the separate fund to the trustee and the trustee cannot determine the value of the separate fund.

The people of the State of California do enact as follows:

SECTION 1. Section 16361 of the Probate Code is amended to read:

16361. (a) For purposes of this section, the following terms have the following meanings:

(1) “Payment” means a payment that a trustee may receive over a fixed number of years or during the life of an individual because of services rendered or property transferred to the payer in exchange for future payments. The term also includes a payment made in money or property from the payer’s general assets or from a separate fund created by the payer. For purposes of subdivisions (d), (e), (f), and (g), “payment” also includes any payment from a separate fund, regardless of the reason for the payment.

(2) “Separate fund” includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock bonus, or stock ownership plan.

(b) To the extent that any portion of the payment is characterized by the payer as interest, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate that portion of the payment to income. The trustee shall allocate to principal the balance of the payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 10 percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subdivision, a payment is not “required to be made” to the extent that it is made because the trustee exercises a right of withdrawal.

(d) Subdivisions (f) and (g) shall apply, except as provided in subdivision (e), and subdivisions (b) and (c) shall not apply, in determining the allocation of a payment made from a separate fund to either of the following:

(1) A trust to which an election to qualify for a marital deduction is made under Section 2056(b)(7) of the Internal Revenue Code.

(2) A trust that qualifies for the marital deduction under Section 2056(b)(5) of the Internal Revenue Code.

(e) Subdivisions (d), (f), and (g) shall not apply if the series of payments would, without the application of subdivision (d), qualify for the marital deduction under Section 2056(b)(7)(C) of the Internal Revenue Code.

(f) If the separate fund payer provides documentation reflecting the internal income of the separate fund to the trustee, the trustee shall allocate the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this act. Upon request of the surviving spouse, the trustee shall require that the person administering the separate fund distribute this internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(g) If the separate fund payer does not provide documentation reflecting the internal income of the separate fund to the trustee, but the trustee can determine the value of the separate fund, the internal income of the separate fund is deemed to equal 4 percent of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the separate fund payer does not provide documentation reflecting the internal income of the separate fund to the trustee and the trustee cannot determine the value of the separate fund, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under Section 7520 of the Internal Revenue Code for the month preceding the accounting period for which the computation is made.

(h) This section does not apply to a payment to which Section 16362 applies.

Approved _____, 2010

Governor